THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC.	:	
	:	
Plaintiff,	:	
	:	**C.A. NO.: 03-394 E**
v.	:	
	:	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.	:	
	:	
Defendants.	:	

CENTRAL TRANSPORT INTERNATIONAL, INC.'S OPPOSITION TO ACCU-SPEC ELECTRONIC SERVICES, INC.'S MOTION FOR RECONSIDERATION OF CENTRAL TRANSPORT'S MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR CLARIFICATION OF COURT ORDER

Central Transport International, Inc. ("Central Transport") prepares this Opposition to Accu-Spec Electronic Services, Inc.'s ("Accu-Spec's") Motion for Reconsideration of Central Transport's Motion for Summary Judgment and/or Motion for Clarification of Court Order. This Opposition corrects certain misrepresentations of fact contained in the record and highlights the lack of support for legal arguments raised by Accu-Spec in its Motion for Reconsideration.

I. ARGUMENT

A motion for reconsideration is appropriate for the purpose of correcting manifest errors of law or fact or to present newly discovered evidence. Corneal v. Jackson Twp., 313 F.Supp. 2d 457, 472 (M.D.Pa. 2003), aff'd, 94 Fed Appx. 76, 2004 U.S. App. LEXIS 7198 (3d Cir. 2004), cert. denied, 160 L. Ed. 2d, 125 S.Ct. 91 (U.S. 2004), citing Harsco Corp. v. Zlotnicki, 779 F.2d 906 (3d Cir. 1985). The Court may alter or amend its prior decision if the party seeking reconsideration can show one of the following: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the Court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact to prevent manifest injustice. Id., citing Max's Seafood Café by Lou-Ann, Inc. v. Quniteros, 176 F.3d 669, 677 (3d Cir. 1995) Additionally, a motion for reconsideration is not a proper vehicle to merely attempt to convince a court to rethink a decision it has already made. Glendon Energy Co. v. Borough of Glendon, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993). Plaintiff suggests that a case decided after oral argument, Crosby v. Landstar, 2005 U.S. Dist. LEXIS 12008 (D.Del. June 21, 2005), constitutes an intervening change in controlling law. A current evaluation of this case proves this assertion to be false. If anything, this case provides authority contrary to Plaintiff's position. Plaintiff also suggests that its arguments relevant to 49 U.S.C. § 14704 were not considered. This too is incorrect, as Plaintiff both briefed this topic in a "supplemental" brief and argued this topic at oral argument. Plaintiff is simply asking this court to rethink a decision it has already made.[1 2]

Plaintiff cites to two cases in its Motion for Reconsideration which it believes supports its assertion that a private cause of action exists under 49 U.S.C. § 14704. However, neither case relied upon by Plaintiff has any relevance or effect on the instant matter. In the "new" case cited by Plaintiff, Crosby, the Court concluded that the plaintiff, which was asserting a negligence claim, failed to allege a claim that could be remedied under 49 U.S.C. § 14704, and dismissed plaintiff's claims. See Crosby at 7. In much the same way, Plaintiff in the instant matter has failed to allege a claim that can be remedied under Section 14704. The claims alleged by Plaintiff are associated with freight claims contemplated by and covered under the Carmack Amendment, 49 U.S.C. § 14706. Like the negligence claims disallowed in Crosby, claims for

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1 To ensure a clean record, it is noted that in its Motion for Reconsideration Accu-Spec has confused the numbering of the Counts alleged in its Complaint. Plaintiff's Motion for Reconsideration, Counsel repeatedly refers to "Count II" of Accu-Spec's Complaint as the count brought under 49 U.S.C. § 14704. See Plaintiff's Motion for Reconsideration. However, Plaintiff's Complaint on p. 5 clearly states that Count I addressed 49 U.S.C. § 14704.

2 Plaintiff has not introduced any new evidence which would impact the Court's decision.

damage to freight are not valid claims that can be remedied under 49 U.S.C. § 14704. The second case cited by Plaintiff, Owner-Operator v. New Prime, et al, 192 F.3d 778, U.S. App LEXIS 18496 (8th Cir. 1999) is not persuasive because this case also did not address § 14706 Carmack freight damage claims and is instead limited to motor carrier leasing issues. Furthermore, this case was already presented to the Court by Plaintiff during the Hearing on Central Transport's Motion for Summary Judgment and again in Plaintiff's Supplemental Brief in Opposition to Central Transport's Motion for Summary Judgment (Exhibits "H" and "I" to Plaintiff's Motion for Reconsideration, respectively). The Court obviously has already considered the Court's ruling in New Prime, and correctly concluded that the decision has no applicability to the claims at issue.

Under any reading of 49 U.S.C. § 14704 it simply has no application to the freight claim pled. When there is a question of statutory interpretation, a court begins with the language of the statute itself. In re United Healthcare System, Inc., 200 F.3d 170, 176 (3d Cir. 1999). The first determination is whether the language has a plain and unambiguous meaning with regard to the particular dispute. Michael C. v. Radnor Township School District, 202 F.3d 642, 648 (3d Cir. 2000). Plaintiff suggests that it is entitled to assert a cause of action pursuant to § 14704 despite the plain reading of the language of the statute which in no way relates to the substance of any of the claims in this case.

Accepting plaintiff's argument would require the Court to ignore the fact that Title 49 provides for a specific well defined and universally accepted regimen for freight claims under 49 U.S.C. § 14706. Congress has specifically provided for this section to address the claims which are the subject of this litigation and based on the plain language never intended for these types of claims to be addressed in § 14704. Interpretation of a statute must give effect, if possible, to every word and cause of a statute. Alexander v. Riga, 208 F.3d 419, 430 (3d Cir. 2000)

Statutory interpretations which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available. First Merchants Acceptance Corp. v. J.C. Bradford & Co., 198 F 3d 394, 402 (3d Cir. 1999). Not only would an analysis consistent with Plaintiff's ignore the plain reading of the statute selected for its cause of action, it would also nullify the section of the statute which actually provides for a cause of action against Logistics Plus as the freight forwarder.

Finally, Plaintiff's claim pursuant to Section 14704 also has no evidentiary support Plaintiff admits that Central did in fact respond to plaintiff's claim in a timely manner. The claim was subsequently "amended" to reflect more accurate dollar values arising out of the same incident. This in no way was a new claim as it arose out of the same incident and had previously been rejected. These facts are undisputed, and Plaintiff has not introduced any new evidence. Plaintiff's claim based on 49 U.S.C. § 14704 continues to be frivolous, legally unsupportable and lacks any evidentiary support. For these reasons, Plaintiff's Motion for Reconsideration must be denied.

Respectfully submitted,

Jeffrey D. Cohen, Esquire
JANSSEN & KEENAN P.C.
One Commerce Square
2005 Market Street, Suite 2050
Philadelphia, PA 19103
(215) 665-8888
(215) 665-8887 (fax)

Attorneys for Defendant
Central Transport International, Inc.

Dated: September 9, 2005